

IN RE:)	IN CHAPTER 7 PROCEEDINGS
)	
GREAT COURT INSURANCE)	CASE NO. 20-60633
AGENCY, LLC)	
)	JUDGE RUSS KENDIG
Debtor)	
)	
)	ADV. PROC. NO. 21-06033
)	
ANNE PIERO SILAGY, TRUSTEE)	
of Great Court Insurance Agency, LLC)	<u>R.C. COOK INSURANCE AGENCY, INC.</u>
)	<u>AND RODNEY A. COOK’S MOTION</u>
Plaintiff)	<u>FOR LEAVE TO FILE FIRST AMENDED</u>
)	<u>ANSWER AND COUNTERCLAIM</u>
v.)	
)	
R.C. COOK INSURANCE AGENCY)	
INC.)	
And)	
RODNEY A. COOK)	
)	
Defendants)	
)	

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Date: June 28, 2022

/s/ Alex J. McCallion

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

1. Defendants/Counterclaim Plaintiffs R.C. Cook Insurance Agency, Inc. (“RCC”) and Rodney A. Cook (“Cook”) (collectively, “Movants”) seek to submit a *First Amended Answer and Counterclaim*.

2. Along with additional affirmative defenses, Movants seek to assert claims additional claims against Debtor, Great Court Insurance Agency, LLC (“Great Court”) for breach of contract, fraudulent inducement, and negligent misrepresentation.

3. The proposed amendment deals entirely with the same transactions currently at issue in these proceedings.

4. The proposed amendment would not delay these proceedings or prejudice Plaintiff Anne Piero Silagy, Trustee of Great Court Insurance Agency, LLC (“Trustee”) in any way.

5. Movants therefore request that the proposed amendment be permitted to ensure the instant dispute is determined on its merits.

II. LEGAL ANALYSIS

6. “Pleadings can be amended under Federal Rule of Bankruptcy Procedure 7015, which adopts Federal Rule of Civil Procedure 15 into bankruptcy practice.” *In re Wittmer*, No. 08-61618, 2011 WL 4372699, at *2 (Bankr. N.D. Ohio Sept. 15, 2011) (Judge Kendig), *citing* Fed.R.Bankr.Pro. 7015.

7. “The rules favor amendment, instructing that leave should be granted ‘when justice so requires.’” *In re Wittmer, supra, citing* Fed. R. Civ. P. 15(a)(2).

8. “The Federal Rules of Bankruptcy Procedure were adopted with the belief ‘that pleadings are not an end in themselves, but are only a means to the proper presentation of a case;

that at all times they are to assist, not deter, the disposition of litigation on the merits.” *In re Varner*, Bankr. N.D. Ohio No. 14-61103, 2014 WL 4988236, *2 (Kendig, J.); *see also Moore v. City of Paducah*, 790 F.2d 557, 559 (6th Cir.1986) (“The thrust of Rule 15 is to reinforce the principle that cases should be tried on their merits rather than the technicalities of pleadings.” (internal quotation marks omitted)). *In re Varner*, No. 14-61103, 2014 WL 4988236, at *2 (Bankr. N.D. Ohio Oct. 7, 2014) (Judge Kendig).

9. “Because the Supreme Court and the Sixth Circuit, as well as the Federal Rules of Bankruptcy Procedure, promote the liberal amendment of pleadings, the prejudice required to deny amendments must be ‘significant.’” *In re Varner* at *3.

10. “If the facts underlying the original claim and the amended claim are the same, or overlap substantially, courts are more inclined to allow an amendment.” *Id.*

11. For example, where “an original complaint alleges a series of transactions, an amendment that seeks to add an additional transaction that is similar to those already alleged should be permitted.” *In re Wittmer* at *3.

12. Movants’ proposed amendment ultimately seeks to set forth additional affirmative defenses in response to the Trustee’s claims, and further recourse against Great Court as a result of its fraud.

13. Even more than the *similar* transactions at issue in *Wittmer*, the transactions underlying the proposed amendment here are *identical* to those currently before the Court. The amendment should likewise be permitted here.

14. Even though the proposed amendment centers on the same underlying facts, this adversary proceeding was initiated less than nine months ago, and discovery remains open.

15. In all, the proposed amendment will aid the Court in resolving this dispute on its merits, and it will not otherwise cause any undue delays or prejudice to the Trustee.

16. The amendment should be permitted.

III. CONCLUSION

17. Movants respectfully seek leave to file a *First Amended Answer and Counterclaim*.

18. Permitting the amendment will ensure the dispute is fully reviewed on its merits.

19. The amendment will also not cause any undue delay or prejudice to the Trustee.

Date: June 28, 2022

/s/ Alex J. McCallion

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CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2022, a true and correct copy of the foregoing *Motion for Leave to File First Amended Answer and Counterclaim* was served via the court's Electronic Case Filing System.

/s/ Alex J. McCallion

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